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New York in 1941, when Fritz was so indignant about the report.

1888 Q. Did he ask you to take any action in connection with any person who had in fact prepared the report? A. Yes. He was very irate about Henry Hines and wanted to have him left off the service of the company.

Q. Will you state why he was angry at Henry Hines?

A. On account of Henry's having filed this report.

Q. You had not seen the report before that time? A. No.

Q. But you took responsibility for it; is that correct?

A. I did, yes.

Q. Now, you testified yesterday that you did not regard Fritz von Opel as being a bona fide Liechtensteinean citizen; is that correct? A. That is right.

Q. Will you explain to the Court why you did not regard him as such?

Mr. Ingoldsby: I object.

Mr. Burling: I am merely asking about a question which my friend brought out on his own cross examination.

Mr. Ingoldsby: I was asking him as to what was stated in a report.

Mr. Burling: No. If Your Honor please, Mr. Ingoldsby also asked him if he did not report Fritz von Opel as a bona fide Liechtensteinean citizen.

The Court: Well, I have an impression he did. 1889 That is my impression. He asked him, and he said he did not.

Mr. Ingoldsby: I believe that is right.

The Court: I suppose his reason might have some bearing on his view. It is not binding on me, of course.

By the Court:

Q. You may answer, Mr. Houghland. A. No. You asked me why I did not regard him as one?

By Mr. Burling:

Q. That is correct. A. He told me a story of his capture at Gibraltar and of how he fooled the English with his Liechtenstein passport; and I actually did not at that time know that when you had a passport, you had citizenship; and Fritz made no reference to Liechtenstein citizenship; and the German arms were quite triumphant at that time, and he seemed to be thoroughly enthusiastic about the German effort. I had no idea of Fritz taking Liechtenstein citizenship sincerely. I didn't know that a passport meant citizenship.

Mr. Burling: That is all.

Recross Examination

By Mr. Ingoldsby:

Q. This particular report, which has not been marked or offered, is not the report which Mr. von Opel became so indignant about, is it? A. I thought it was; I 1890 don't know.

Q. Well, look it over and see if it refreshes your recollection.

Mr. Burling: If Your Honor please, I asked for the document from counsel. I did not see it yesterday.

Mr. Gallagher: It was not here.

By the Court:

Q. Let us find out, if you can tell, whether it is the one he was indignant about. A. I don't believe this report is, no.

By Mr. Ingoldsby:

Q. The report that Mr. von Opel was talking about was filed prior to the summer of 1941, wasn't it? A. I think so, I believe it was in the summer of 1941.

Q. In the summer? A. Yes.

Q. But it was filed prior to the time you and Mr. von Opel met in New York, wasn't it? A. Yes.

Q. That was the report? A. Application for license; just like that.

Q. It was stated in that report that Mr. von Opel traveled on a Liechtenstein passport? A. Yes.

1891 Q. The reason for the difficulty or for the indignance of Mr. von Opel was that he felt the company should have reported that he was a Liechtenstein citizen rather than make the statement that he traveled on a Liechtenstein passport? Wasn't that what the argument was about at the company? A. I never thoroughly did understand what his objection to the matter was.

Q. You did not understand? A. Not thoroughly.

Q. Did I understand you to state that even before the United States entered the war, this German ownership had become harmful to the business of Spur? A. Yes; after the freezing took place, it became harmful.

Q. When did the freezing take place? A. It took place in June, 1941.

Q. Isn't it a fact that the most profitable year that Spur ever enjoyed in the long history of the company was the year 1941? A. Yes.

Q. And the reason, for the most part, for the loss following 1941 was the general, overall gasoline shortage; isn't that correct? A. I would say that was the substantial reason, yes.

1892 Q. Now, you say that your motive at that time was to free the company from German ownership. By "at that time" I am talking about, or I assume you were talking about, the time immediately preceding the entry of

the United States into the war; is that correct? A. I was talking about the whole period.

Q. Of the whole period? A. The war.

Q. As a matter of fact, you were interested in freedom from the Fritz von Opel control or ownership even prior to that, weren't you? A. I don't recall; no. I am sure I would have preferred a different ownership than a German ownership, if that is what you are asking.

Q. That is my question. That was true even prior to the date— A. I think it would have been true from the day they entered it.

Q. German ownership, if it existed today, would not interfere with the operation of your business substantially, would it? A. I think it would interfere tremendously.

Q. Why? Today? A. I think so. Do you?

Q. No, I don't. I would like to know why you 1893 think so.

The Court: I do not think that makes much difference.

Mr. Ingoldsby: I do not believe this has been marked. Will you mark that, please, Mr. Clerk?

Do you have any objection to that Treasury report?

Mr. Gallagher: It is the one he testified yesterday he approved after Hines had filed it.

Mr. Burling: No objection.

(The Treasury report referred to was marked as Plaintiff's Exhibit 173 and received in evidence.)

Mr. Ingoldsby: That is all.

(The witness left the stand.)

Mr. Baum: We will call Mr. Butler P. Crittenden.

Thereupon—BUTLER PARNELL CRITTENDEN was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Baum:

Q. What is your full name, Mr. Crittenden? A. Butler Parnell Crittenden.

Q. Where do you reside, Mr. Crittenden? A. In Southbury, Connecticut.

Q. When were you born? A. November 8, 1889.
1894

Q. Where? A. In Rochester, New York.

Q. Will you state briefly for us your education?
A. I was educated in the public schools of Rochester and attended Massachusetts Institute of Technology, where I was graduated as a mechanical engineer with a bachelor of science degree.

Q. Subsequent to your graduation from Massachusetts Institute of Technology, what has been your major occupation through the years? A. The engineering phase in the oil business.

Q. About how long have you been engaged in oil engineering or petroleum engineering? A. From 1920 to 1940.

Q. What did you do in 1940? A. In 1940 I took a position with Leonard Construction Company and the Civil Engineer Corps of the Navy in the construction of a fuel oil depot at Newport, Rhode Island.

Q. What is your present occupation, Mr. Crittenden?
A. I am mechanical engineer with the firm of Westcott & Mapes, in New Haven.

Q. Did you ever do business under the name of Crittenden Engineering Company? A. Yes.

1895 Q. When was that company organized? A. In
1931.

Q. Where were your office located? A. At 420 Lexington Avenue, New York.

Q. Directing your attention to the year 1932, did you meet a man by the name of John Cole? A. Yes.

Q. Where did you meet him? A. In my office.

Q. Approximately when during the year 1932? A. Well, I would say early in the year 1932.

Q. What happened at this meeting with Mr. Cole? A. Mr. Cole called at my office and stated—

Mr. Ingoldsby: I object. I do not know what this is all about, but it seems to me like hearsay, if Mr. Cole is going to make some statement.

Mr. Baum: Mr. Cole acted as, at least, subagent for Mr. Hoffacker. Mr. Cole is the man who acquired the Spur stock, and Mr. Cole was the instrumentality in the enterprise we are coming to in Louisiana, which was also an asset of Uebersee.

The Court: You are going to connect it?

Mr. Baum: Yes; in fact, I think the answer will disclose that.

The Court: You could not connect him up as 1896 agent by what he says. Are you going to connect him up with intermediate proof?

Mr. Baum: I believe the proof of Mr. Cole's activities is already in the record, Your Honor.

Mr. Ingoldsby: I do not believe so.

The Court: You will have to refresh my recollection on that. The rule is that what an agent states is admissible; but you can't prove agency by what an alleged agent states; you have to prove it independently. If you can connect it up, I will permit it.

Mr. Baum: I will pass that. I think I can continue.

By Mr. Baum:

Q. You had this meeting with Mr. Cole. We won't go into what was said, at this point. Thereafter, did you have another meeting with Mr. Cole? A. Yes.

Q. Was anyone else with Mr. Cole at that meeting? A. Theodore Hoffacker.

Q. This meeting was held about how long after the first meeting with Mr. Cole? A. My memory is shortly after.

Q. Where? A. In the same office.

Q. In your office? A. Yes.

1897 Q. Did Mr. Hoffacker have any conversation with you at this meeting? A. Yes.

Q. Will you tell us what he said? A. He stated he was an agent acting in behalf of considerable, extended foreign funds, and that he was advisory and was looking around for potential investments in the oil business.

Q. Did Mr. Hoffacker make any reference to the source of the funds he referred to? A. Yes.

Q. What did he say? A. He said that he was agent for and adviser to Fritz von Opel, the son of Opel the automobile manufacturer in Germany, who had sold that company to General Motors.

Q. I ask you again, Did he say anything about what the source of the funds was?

Mr. Ingoldsby: Just a second. I object. I think that question has just been answered.

The Court: Well, he may amplify it, if there is anything further.

The Witness: Not beyond the fact that those funds were derived from the sale of the Opel Motor Works in Germany.

By Mr. Baum:

1898 Q. Did Hoffacker state what his purpose was in coming to see you? A. Yes.

Q. Will you tell us what he stated? A. He stated that Mr. Cole had related to him our opinions on opportunities for investing money in the oil business and that he was greatly interested, and he suggested that we make a survey.

Q. Did Mr. Hoffacker ask you to do anything? A. Yes.

Q. What did he ask you to do?

Mr. Ingoldsby: When was this, please?

Mr. Baum: It has been identified, if Your Honor please, as shortly after the first meeting with Mr. Cole, which was early in the year 1932.

By Mr. Baum:

Q. Now, I believe the question is, What did Mr. Hoffacker ask you to do? A. Mr. Hoffacker asked us to furnish him an estimate of the cost of making a survey of purchasable crude oil producing properties in the Southwest and crude oil refining properties in the Southwest.

Q. Going back for a moment to your conversation with Mr. Hoffacker about those funds, did he say whose funds they were?

1899 Mr. Ingoldsby: Just a second. I think three attempts have been made at that, Your Honor, and three times the answer has been made. I object.

The Court: I will permit him to answer. I will do that.

Mr. Ingoldsby: May the conversation be placed, then, as to time and date?

Mr. Baum: It has been placed three times, if Your Honor please. It is the same conversation.

The Court: You can straighten it out on cross examination, if you wish. He may answer.

The Witness: Yes. He described the funds as funds derived from the sale of the Opel Motor Works in Germany, entrusted to the son of the owner, Fritz von Opel, and that he was an agent for Fritz von Opel and guided him solely in all of his investments in the United States.

By Mr. Baum:

Q. You just said funds entrusted to Wilhelm von Opel?

A. No, I didn't say that; funds entrusted to the son by the father.

Q. Was the father's name mentioned? A. At that meeting, I wouldn't remember. It was subsequently, but it was always the owner of the Opel Motor Works.

Q. Going back to this report which you said Mr. 1900 Hoffacker asked you to prepare—or to the survey—

A. Yes, sir.

Q. (Continuing) did you then undertake to prepare a survey? A. We did.

Q. Were you paid for undertaking that? A. Yes.

Q. What was your fee? A. As I remember, we asked for and were paid—it was either \$12,500 or \$15,000.

Q. Who paid you that sum? A. Theodore Hoffacker, agent.

Q. When you say, "we", do you mean the Crittenden Engineering Company? A. Crittenden Engineering.

Q. Some time thereafter you completed your survey; is that correct? A. That is correct.

Q. You submitted it to whom? A. Theodore Hoffacker.

Q. Will you tell us what happened after you submitted your survey or report? A. The report specifically recommended opportunities for acquiring crude oil producing properties and also a list of small crude oil refining properties.

1901. Shortly after the opportunity looked so favorable, there came under consideration a very much larger investment syndicate business proposition that had been discussed previously. Involved in that syndicate would have been, had it worked out, Theodore Hoffacker, Fritz von Opel, and several Chicago investors.

Q. About when was this consideration of the syndicate you have referred to? A. Very early in 1933.

Q. At the time this syndicate was under discussion, did you receive any further information about the funds which were to be invested? A. Yes.

Mr. Ingoldesby: I object. I think he should identify the source of the further information.

Mr. Baum: First, he has to show if he did receive any.

The Court: He can answer yes or no and tell.

The Witness: Yes.

By Mr. Baum:

Q. From whom did you receive such information? A. The Crittenden Engineering Company employed agencies, first, to learn more about Theodore Hoffacker; and secondly, as to the ownership of the funds that Hoffacker had stated were in this country.

1902 Q. At this time did Mr. Hoffacker say anything to you about the funds? A. Mr. Hoffacker never deviated from the fact that the funds were funds derived from the sale of the Opel Motor Works and entrusted to the son, Fritz von Opel, by his father, and that he was agent.

Q. Did you ever hear the expression "usufruct contract"? A. Yes.

Q. When did you hear that expression? A. Some time later. Some time later, after these business undertakings were created; and then I heard it directly from Fritz von Opel himself on the trip I made to Germany.

Q. What happened to this proposal for a syndicate?

A. The Chicago group decided that they would not participate.

Q. So the matter was dropped? A. Yes.

Q. At or about that time did you become

The Court: Are you going to leave out what was said on this trip to Germany?

Mr. Baum: Yes. Do you wish me to do it now?

The Court: No.

Mr. Baum: All right.

1903 By Mr. Baum:

Q. At or about this time that the syndicate proposition fell through, did you become associated with a

corporation known as Oil Refineries, Incorporated? A. After the decision that the syndicate operation would not be carried on, Hoffacker elected and instructed us to submit to him a management contract pertaining solely to the operation of crude oil refining properties which were available. That contract was written between Theodore Hoffacker, agent, and Crittenden Engineering Company, and provision of salaries, earnings participation, and so forth, were set forth.

Q. I believe I asked you about Oil Refineries, Incorporated? A. Correct.

Q. Did you ever become associated with such a corporation? A. Yes.

Q. Will you tell us when? A. In 1933 a company was formed, as I recall it, by the Corporation Trust Company, and later—very shortly later—that was a Delaware corporation, and it was reformed in Louisiana as a Louisiana corporation.

Q. And it had its office where? A. In Shreveport, Louisiana.

1904 Q. What was the business of Oil Refineries, Incorporated? A. Under its charter, an overall business; but essentially that of purchasing and refining crude and the sale of refined products.

Q. Did the corporation own a refinery? A. Yes, it purchased one.

Q. It did? A. At Overton, Texas.

Q. Who were the officers of this corporation? A. Theodore Hoffacker, as I recall it, was president; I was a vice president; Martin J. Grogan was a vice president.

Q. Where did the corporation get the funds to buy this refinery? A. Theodore Hoffacker, agent.

Q. How much money was invested in the corporation? A. As I recall it, 125—somewhere between \$90,000 and \$150,000. May I state this all occurred in 1933? This was 15 or 16 years ago. I have no records. If I hesitate, it is to try to recollect.

Q. Was there any relationship between Oil Refineries and Crittenden Engineering Company? A. Yes.

Q. Will you please tell the Court what that relationship was? A. A management contract in which Crittenden Engineering undertook to manage—purchase, manage, and consummate the sales of refined products for the corporation Oil Refineries, Incorporated.

Q. In the year 1933 did you become associated with a corporation known as Oil Production, Incorporated? A. Yes.

Q. Will you state who the officers of that corporation were? A. The same individuals, Theodore Hoffacker, Crittenden, and Grogan.

Q. Was that corporation formed in the year 1933? A. I would say yes, late in—very late in 1933 or perhaps early in 1934.

Q. Will you tell us what was the business of Oil Production, Incorporated? A. The purchase and operation of crude oil producing properties.

Q. When you say "crude oil producing properties," do you mean oil wells? A. Yes.

Q. Was there any relationship between this corporation and Crittenden Engineering Company? A. There was.

It—Crittenden Engineering—had a management 1906 contract.

Q. Did this corporation purchase crude oil from those properties? A. It did.

Q. How much was invested in the purchase of such properties? A. Well, from first to last, in round figures, I think between \$400,000 and \$500,000.

Q. Where did those funds come from? A. There was a change in the financing. Those funds came from—bonds were issued in the name of Oil Production, Incorporated, and purchased by the Uebersee Finanz-Korporation—bonds issued in the exact amount of the expenditure.

Q. The offices of Oil Production were located where? A. In Shreveport, Louisiana.

Q. At the time those corporations were organized, had you met Fritz von Opel? A. At the time those corporations were organized? Yes, I think I met Fritz von Opel in the period between the formation of Oil Refineries, Incorporated, and Oil Production, Incorporated.

Q. Where did you meet Fritz von Opel? A. My recollection is that my first meeting with him was either at Theodore Hoffacker's home in Scarsdale or with 1907 Theodore Hoffacker in Shreveport, at our offices there.

Q. In Shreveport? A. Yes, sir.

Q. In other words, he was introduced to you by Theodore Hoffacker? A. Yes.

Q. Do you remember what Theodore Hoffacker said at the time he introduced Mr. von Opel to you? A. Not particularly, no.

Q. Now, some time after this meeting with Fritz von Opel and the formation of these corporations, did there come a time when you were considering selling some of the assets of Oil Production, Incorporated? A. Yes, we were asked to.

Q. Who asked you to? A. Theodore Hoffacker.

Q. Will you tell us under what circumstances and when he asked you to do that? A. He stated that Fritz von Opel's father had become involved with the Nazis in some way or another and needed funds, and could we contribute funds. We asked him how much, and he outlined a round figure of a hundred thousand.

Q. When was this? Was this a conversation with Mr. Hoffacker? A. Yes.

1908 Q. When did this take place? A. Well, I would think in 1934 or 1935. I know that we had purchased several leases and operated them. I therefore think it was probably in 1935.

Q. You stated that Mr. Hoffacker asked you to raise some money. What did you reply to him on that occasion? A. We told him that we would, as I recall it—the only

way we would have of raising funds would be the sale of a crude oil producing lease.

Q. Did you thereafter sell one of the leases? A. Yes.

Q. About how much money was raised by that sale?

A. Well, I think we recovered the cash expenditure on the lease and assigned obligations and made some—perhaps \$150,000, I think, or thereabouts. I don't remember the exact sum.

Q. Do you recall where that money was transmitted?

A. Well, it was transmitted to the bank in New York and exchanged for bonds.

Q. Exchanged for bonds which were surrendered? A. Redeemed bonds.

Q. Do you remember the name of that bank? A. No, I don't.

Q. Did you ever have occasion to meet Mr. Fritz 1909 von Opel in Montreal, Canada? A. Yes.

Q. Will you tell us approximately when that occurred? A. Oh, I have got to project the thing. Maybe 1935 or 1936. In the summer of 1936.

Q. Under what circumstances did you go to Montreal?

A. Mr. Hoffacker requested that I go with him and Walter Bayer to Montreal to meet Dr. Hans Frankenberg and Mr. Fritz von Opel.

Q. Where did you go in Montreal when you arrived there? A. Well, as I recall it, the Windsor Hotel.

Q. Did you meet Mr. Frankenberg? A. Yes.

Q. Had you known him before? A. No.

Q. Who introduced him to you? A. Why, as I recall it, Hoffacker.

Q. Do you recall what he said when he introduced Mr. Frankenberg to you? A. Why, he explained to us that Dr. Frankenberg had assisted or was a representative of Fritz von Opel and knew his father in many ways.

Q. Did you have any business discussions with Mr. Fritz von Opel and Mr. Hoffacker in Montreal? A.

1910 Mr. Bayer—at the request of Hoffacker, we reviewed the operations of the two companies and

made projections into the future as to what might be expected.

Q. How long did those discussions last? A. Oh, it was very brief. As I recall it, it was in the morning.

Q. How long did you stay in Montreal? A. That one day and left that night.

Q. You left that night? A. Yes, sir.

Q. You were not engaged in business conferences throughout the day? A. No.

Q. Now, directing your attention to the year 1937, did you have occasion to make a trip to Germany in that year? A. I did.

Q. Will you tell us under what circumstances that came about? A. At Hoffacker's request, I went to New York, and he told me that Fritz von Opel wanted him, and he wanted me—I mean Mr. von Opel wanted Mr. Hoffacker—or Mr. Hoffacker invited me to join a technical congress tour of European manufacturing properties.

I told Hoffacker that if the corporation was willing to spend money on that kind of business, I had what I considered a very much more useful reason for going to Europe.

Q. What was that reason? A. I had an old friend in the oil refinery engineering business in Wichita, Kansas, by the name of Fred Koch, of the firm of Winkler & Koch; that Koch and I had been investigating the usefulness of potential business opportunities in the development of the then rather obscure process known as the Fischer-Tropsch process, which had been developed on full plant scale in Germany.

Q. By the way, what was this process? A. It was a process to synthetically produce gasoline from natural gas or from coal, and Koch's interest and my interest were in the American rights to develop the process of manufacturing gasoline from natural gas; and I explained to him that Fritz von Opel's connections in Germany, I considered, were valuable to the extent that he could

probably arrange a meeting between Koch and myself and those individuals in Germany who were in a position to grant such a license or contract.

Hoffacker apparently thought that was a good reason for making the trip to Germany and, as I understood it, communicated with Mr. von Opel—Fritz von Opel—and it ended up by Mr. von Opel agreeing or stating that he would assist us when we went to Germany.

1912 Q. When did you go to Germany, approximately?

A. Well, April or May of 1937.

Q. Who were in the group that went to Germany? A. Theodore Hoffacker, Fred Koch, and myself.

Q. Did you go by ship? A. Yes.

Q. Do you remember the name of the ship? A. Queen Mary.

Q. Where did you go when you arrived in Europe? A. Well, we went to Berlin by Cherbourg and Paris.

Q. Where did you stay in Berlin? A. At the Bristol.

Q. Did you meet anyone in Berlin? A. Yes, I met Fritz von Opel.

Q. How long did you stay in Berlin on this occasion? A. Upward of a week.

Q. What did you do while you were there? A. We had—we—that is, Theodore Hoffacker and Koch and Fritz von Opel and myself—through the instrumentality of Fritz von Opel we met with a group who, as I recall it, I thought were the directors of the Ruhr Chemie. Now, there is a whole long string of words out from here, but it was a chemical corporation with a plant in Oberhausen.

We met with that group, our purpose was stated, and subsequently it was arranged that we could or
1913 would be permitted to visit the plant and talk to the plant director and the plant manager.

Q. Did you do anything else while you were in Berlin? A. Yes. In the meantime, Mr. von Opel extended every courtesy: took us to Potsdam, took us to night clubs, took us to galleries, and many points of interest.

Q. Mr. von Opel took you around Berlin, in other words?
A. Yes, he did.

Q. Did he make any comments about Berlin while he was taking you around?

Mr. Ingoldsby: I object.

The Court: What is the materiality?

Mr. Baum: Its materiality is that Mr. von Opel has testified that he was a great anti-Nazi. I think it is material on that point.

Mr. Ingoldsby: Is the question of Naziism at all material?

The Court: I do not know that we are going into that. Are we? Is it brief?

Mr. Baum: It is very brief.

The Court: All right. Go ahead.

The Witness: He deplored the effect of the Nazis—Berlin Nazis, as he called them—on Berlin and described to me the changes in the city: They had cut trees 1914 down along the Unter den Linden; and the Emperor's Palace was shabby; and so it went.

The Court: I think we will take a five-minute recess now.

(At 11:15 a.m. a short recess was taken. The following then occurred:)

1915 By Mr. Baum:

Q. Mr. Crittenden, before we took the recess I believe you stated that you had conferences in Berlin and had arranged to go to Oberhausen; is that correct? A. Correct.

Q. Did you then go to Oberhausen? A. We went to Essen and stayed at a hotel there, and then, as business required, went from Essen to Oberhausen.

Q. And who is "we"? A. Mr. Fritz von Opel, Theodore Hoffacker, Fred Koch, and myself.

Q. And what did you do in Essen or Oberhausen? A.

We met the director, resident director, of the manufacturing undertaking, a Dr. Martin, and his assistants. There were a number of these conferences, in the first of which we stated what we wished to do, the type of contract we wished to develop.

They would take that under consideration. We would return to Essen and then, on notification, go back to Oberhausen.

Q. How long did you stay in Essen at this time? A. Upward of two weeks.

Q. I see; and during those two weeks you had conferences from time to time with officials of this plant? A. Yes, sir.

1916 Q. Did these conferences concern this Fischer-Tropp process you referred to? A. Tropp.

Q. What was your purpose in conferring on this Fischer-Tropp process? A. Koch and I had some knowledge of it from technical reviews and individuals who had been in Germany in connection with the construction of the plant. It was a plant in which there was certain accessory equipment furnished and installed by American companies.

At that time there was in the United States a great drive for additional crude equipment properties—let us say crude oil reserves, exploration—with the meager information we had, the Fischer-Tropp process looked like a highly commercial undertaking, inasmuch as there was a tremendous amount of natural gas being produced and being discovered all in the area in which I operated.

Q. And what did you propose to do with this process? A. Beg your pardon?

Q. I say, what did you propose to do with this process? A. We wanted the development rights of manufacturing synthetic gasoline from natural gas.

Q. By "we," whom are you referring to in this connection? A. At that time it was confined solely to
1917 Koch and myself. There was no solicitation of funds from Fritz von Opel.

Q. Did you conclude these negotiations in Oberhausen?

A. We concluded negotiations there.

Q. And what was the conclusion of these negotiations?

A. And were subsequently notified that there were American interests that had those rights. They, therefore, could not write a contract with us.

Q. Now, while you were in Essen, what was the relationship between Mr. Fritz von Opel and Mr. Theodore Hoffacker? A. Poor, growing to bad.

Q. What do you mean by your answer? A. Well, the conversations between Mr. von Opel and Hoffacker were in German, which I do not understand sufficiently to have followed them, but Hoffacker would be very abusive, very dominating, and leave the room and later recite to me this, that, and the other thing. I could best describe it, he considered Fritz von Opel a play boy, an incompetent, and that if it had not been for him, Hoffacker, Mr. von Opel would have lost his shirt. That was always his expression—that he considered Mr. von Opel very ungrateful.

Now, over the period—When I say it went from poor to worse, I recall driving back from Oberhausen and we came to a railroad crossing and a very violent argument occurred as we crossed the railroad crossing, and 1918 Mr. Hoffacker flourished his walking cane at him and then got out on the street and got in the car again. I don't know what it was about, but it was noisy.

Q. While you were in Essen did you have occasion to have dinner with Mr. von Opel? A. Oh, yes, nearly every night.

Q. Did you have dinner with him on the day of this incident in the car you referred to? A. Yes.

Q. Will you tell us about this dinner? A. Well, we returned to the hotel, and Hoffacker was very angry and would have nothing to do with Mr. von Opel, and, as I recall it, he and Koch went off to dinner together, and Mr. von Opel and I had dinner.

Q. And what was the discussion between you and Mr.

von Opel? A. Well, after dinner I asked Fritz von Opel what his relationship was to Hoffacker, and I also asked him who owned the funds and how he was operating.

Now, to give you a very general description, he told me that he was entrusted with the use of a considerable amount of money by his father under what he described as a usufruct contract and, in a general way, he had the handling of the funds and accounted back to his father; and also at that time related that he had a cousin, whose 1919 name I do not recall, who was operating under a similar usufruct contract with funds entrusted to the cousin by Fritz von Opel's uncle.

In response to my question about Hoffacker—and I think the question was properly put—here we were in business with Hoffacker, agent—little knowledge of the background—and at that dinner he told me that his father was very much exercised as a result of a report that his father had caused to be made as to who Hoffacker was and what kind of an individual he was, and apparently the report was adverse, and Fritz said that his father was very much concerned, was very angry that he was associated with Hoffacker.

Q. Was the name Frankenberg mentioned at this conversation at the dinner? A. I don't recall whether it was or not. Frankenberg—I had met him in Montreal, and his name ran through the thread of the story. I gained the impression that Dr. Frankenberg at that time was acting in behalf of his father and had assisted Mr. Fritz von Opel's father on many occasions and in many ways.

Q. Now, at the conclusion of these negotiations in Oberhausen, where did you go? A. I went to London and then to the north of Ireland, where a cousin lives.

Q. Now, at this conversation with Mr. von Opel in Essen, I believe you said that he testified that he 1920 had the use of the funds under a usufruct contract; is that correct? A. Well, I will have to reword it. He stated to me that the funds had been entrusted to him for investment and handling.

Q. By whom? A. By his father, under what he called a usufruct contract.

Q. Had you ever heard of a usufruct contract before?

A. No, and I subsequently asked the lawyers to look it up, and the definition of it was so vague that none of us knew definitely what a usufruct contract was; but I gained, from what Mr. von Opel's conversation with me was, that his own compensation was derived from the profits of the handling of these funds.

Q. Now, you say you went to Ireland? A. Yes.

Q. Did you eventually return to the United States? A. Yes. Then I met Hoffacker and Koch in London and we proceeded to Southampton and sailed for the United States.

Q. Do you remember how you returned to the United States? A. You mean the name of the vessel?

Q. You came by boat? A. Oh, yes. We sailed from Southampton on The Cunard Line.

1921 Q. Is there any circumstance which enables you to fix approximately when you returned to the United States? A. Yes.

Q. What was that? A. Either the first or second day at sea, a ship paper carried the account of the burning of the Hindenburg, a dirigible, at Lakewood. Hoffacker was very much exercised. It took us back to Oberhausen, where he wanted the three of us to buy tickets on the Hindenburg and go back on it, and I remember Mr. von Opel's counseling me to keep my feet on the ground and take a boat.

Q. Now, after your return to the United States were there any negotiations or discussions concerning a consolidation of the companies you were interested in? A. Yes, there was.

Q. And with whom were those negotiations conducted?

A. On return to the United States. In that year, as I recall it, business was pretty good, and Walter Bayer, of

the firm of Bayer and Clauson, who were auditors—they were auditors for Uebersee and they were auditors for the described other undertakings in which Mr. von Opel was operating—Bayer came to Shreveport on his usual—I forget—quarterly or semi-annual audit, and he stated he thought—he always referred to them as the Germans—would prefer that the operating companies, Oil 1922 Refineries and Oil Production, to be consolidated with three properties in which Grogan and Crittenden had the ownership, a small refinery with its pipeline in Arp, Texas, a larger pipeline in the east Texas field, and a refinery in Shreveport, and he requested that we give consideration to it; and, in general, an agreement was reached in which Grogan and Crittenden were to determine earning capacity, asset value, and that the same factors would be developed with Oil Production and Oil Refineries, to the end that an agreement would be reached having all the properties that were consolidated into one operating company, in which Grogan and Crittenden would have a financial interest, in addition to the management contracts.

Q. What form of a financial interest? A. Stock ownership.

Q. And what was the name of this enterprise in which Grogan and Crittenden had the ownership? A. There was a small refinery at Arp, Texas, known as the Trio Refining Corporation, the Centra Pipelines, and the De Soto Crude Oil Purchasing Corporation, and Rhodesia Oil Refining Corporation.

Q. And the proposal was to consolidate these corporations which you have just named with Oil Refineries and Oil Production? A. Yes, one corporate interest.

Q. Now, you said that you agreed with Mr. Bayer 1923 to evaluate your interest and he would evaluate the other interest? Was anything done in that connection? A. Yes, it was done.

Q. And what happened? A. Bayer notified us—notified

me, or he notified Grogan and me, that the Germans would like to have us come to Switzerland, complete the transaction, and we went.

Q. You went to Switzerland? A. Yes.

Q. When did you go to Switzerland? A. July or August of 1937.

Q. And where did you go in Switzerland? A. The Baur-au-lac Hotel.

Q. Where is that located? A. At Zurich, Switzerland.

Q. Who went on this trip to Switzerland? A. Mr. and Mrs. Bayer, Mr. Charlton Lyons, Mrs. Crittenden, and myself.

Q. And whom did you meet when you went to Zurich? A. I met Fritz von Opel and Dr. Hans Frankenberg.

Q. And how long did you stay in Zurich? A. Oh, I would guess the better part of three weeks.

Q. And what took place while you were there? A. There were discussions held in the offices of Frankenberg and Gaeng. Usually there was present Fritz von 1924 Opel, Walter Bayer, Hans Frankenberg, and myself.

Q. Did these conferences take place every day? A. Yes, in general they did, except for periods in which Frankenberg was out of town.

Q. And where did these conferences take place? A. In Frankenberg's office.

Q. Do you remember where that was? A. Yes; on—it is Peterstrasse Street or Peterstrasse Square, I remember.

Q. What was the subject of these conferences with the parties you mentioned? A. Well, the conferences started out with a review of the financial statements, earning power, asset value, of each of the business entities involved. Bayer—I, representing Grogan and Crittenden, and Bayer as auditor, representing Oil Refineries and Oil Production, and also Bayer in a most general way representing each group—he and I having worked over these figures during the transatlantic trip and had arrived at some indices or

factors by which we might conduct negotiations or subsequent division of ownership.

Dr. Frankenberg did most of the questioning. Many of the questions were referred to Mr. von Opel.

So the negotiations were carried on until we reached an agreement, near the end of the visit, on respective ownerships, and a general formula as to how we would 1925 carry on the consolidation of the ownerships of the property into one corporation.

Q. And was this consolidating corporation to operate with the same capital? A. No. I, representing Grogan and Crittenden, asked that considerable additional working capital be put into the venture.

A very large part of the working capital of the refining and the pipeline properties had been furnished to the use of gross sales funds derived from a sales contract which Grogan Oil Company had with these companies. It was more or less of a quick turnover of funds and a credit relationship; and this was all explained to Dr. Frankenberg.

He recognized that we were operating under the influence, perhaps, of a large amount of money that did not exist. We knew we were, and we wanted more funds put in the company; and at that juncture in the proceedings, Dr. Frankenberg said that he would like to see the Grogan Oil Company's sales contracts extinguished and work out some different agreement. The company had its own sales department.

Now, further along the financial aspect of those discussions was the principle of whether the company should expand or retract. I recited to the group what I thought were many opportunities still to buy crude oil producing properties, which is the one thing I counseled.

1926 We had considerable valuable crude oil property in the ground that the company owned in the East Texas Field. There was a promise of an early and marked increase in crude oil posted prices, and there was certainly

the thought of a great many members of the industry that the day was not far off where the posted price of crude would be doubled.

Now, as a result of those discussions, I took the position that—there was one part of the discussion in which there was consideration of selling the crude oil properties and taking the profits, which I stated would be very large, and that the company would then be a refining pipeline company, without any crude oil reserves, insufficient funds, and I thought that it would not survive.

The net result of the meeting was an agreement as to how we would share the ownership in a consolidated corporation, an indication of new funds to be put in, and instructions to me to go back to the United States and survey the market towards investing additional funds in crude oil producing companies.

Q. An indication of new funds from whom? A. To be put up by the Germans.

Q. Who said that they would put up funds? A. Well, Dr. Frankenberg and Mr. von Opel under the general provisions of the agreement—"In consideration of consolidating, we will." Nothing in writing; verbal.

1927 Q. Were all these conferences in Zurich held in

Frankenberg's office? A. Well, as I recall, all but one, and there was some technical matter regarding the accounting practices, crude oil reserve, depletion reserves, building labor and expense, and such items that he was not familiar with, and he did not feel very well, and we went to the Dolder Hotel, and Bayer explained it to me.

Q. Was Mr. von Opel present at the Dolder Hotel? A. I don't think so. I don't remember.

Q. What circumstances enable you to be certain that the conferences were held in the office of Mr. Frankenberg?

A. Put that question again.

Q. I will withdraw the question.

How is it you happen to remember this office of Dr. Frankenberg so well? A. Well, unlike American—many,

I suppose, American offices—in a city as important as Zurich in Switzerland, on Peterstrasse either Square or Street, a building with flowers on the window sills—you went in. There was a little push button elevator that looked like a comic opera landaulet, all in pink satin brocade; went upstairs; went to offices there which were great high doors and a little peephole like this. You pushed the button and a girl looked through the hole, and you went in; and the offices were quite ornate.

He had some very valuable paintings there on the wall and behind the door.

The first impression of an American coming out of Arkansas, Texas, Louisiana, to an office of that type—I suppose that is what registers in my mind.

Q. Did you have any conversation with Mr. Frankenberg about those paintings? A. Yes. I kind of chided him on having—they were Degas originals, and Dancing Girls, Montemart—well known—and I sort of chided him on having them concealed behind the door.

Q. And did you have any other conversation with Frankenberg at this time? A. Yes, I did. I asked him very frankly what his relation was to Fritz von Opel and the business; and his reply was very simple and direct.

He said that he represented Fritz von Opel's father on many occasions in many places for many years and was assisting his father.

Q. Now, at the conclusion of these conferences in Zurich, did you have any conversation with Fritz von Opel? A. Yes.

Q. Will you tell us what that conversation was? A.

Well, he indicated satisfaction with the idea that Dr. Frankenberg was willing to consider spending more money in crude oil producing properties.

He told me that Dr. Frankenberg had assisted his father out of great trouble, and related to me the Nazi nonsense—that was the first time I knew about it—where his father had been fined a sum, as I recall it, something like \$400,000,

and we had contributed part of the funds and Dr. Frankenberg--

Mr. Ingoldsby: I did not hear the last part.

The Witness: I say, Dr. Frankenberg had been instrumental in supplying the remainder.

By Mr. Baum:

Q. After these conferences in Zurich terminated, where did you go? A. We went to Frankfurt and took a boat on the Rhine to Cologne, stayed there a little while, and did some sightseeing; then took the train from Cologne to Amsterdam and Rotterdam—that is, Mrs. Crittenden, Mrs. Lyons, and myself—and went to London, and the Bayers left us in Paris.

Q. Did you then return to the United States? A. Then we returned to the United States; Mr. and Mrs. Bayer by separate transportation than we did.

Q. In the same year, 1937, did you have occasion to meet Mr. Frankenberg again? A. Yes.

Q. Where did you meet him and approximately 1930 when? A. Well, I met him in the fall of 1937 at the Plaza Hotel in New York City.

Q. Was anyone else present when you met him? A. At that meeting, no.

Mr. Gallagher: May I interrupt just a moment? Mr. Baum, I think you are confused on your dates. The meeting was in 1938.

Mr. Baum: I think the witness will testify what his recollection is.

Mr. Gallagher: I believe he has testified in 1938. You said, "in the same year did you have occasion to see Dr. Frankenberg?" And then you say in 1937.

The Witness: No; I testified in the year 1937.

Mr. Gallagher: I am sorry.

The Witness: My testimony has been confined to two trips, one to Germany and one to Switzerland, in the year 1937.

By Mr. Baum:

Q. You stated you met Mr. Frankenberg in the Plaza Hotel in New York? A. Yes.

Q. How did you know Frankenberg was in New York?

A. Well, again, I received notice from Bayer that Dr. Frankenberg and Fritz von Opel would be in New York, and I went up there.

1931 Q. And you met Frankenberg? A. And I met Dr. Frankenberg, yes.

Q. Do you remember where you met him? A. Yes. It was in the afternoon and we had tea or a cocktail in the Palm Room. He did not like music; so we went out there and sat in the Palm Room.

Q. What conversation did you have with Dr. Frankenberg on that occasion? A. He told me he was greatly distressed with the changing conditions in Europe, that he had to consider his responsibility to investors who he represented who had their funds in different countries, and some of them in the United States, and he felt he ought to stay as liquid as possible, and that he was going to review the whole situation, in view of the Zurich meeting, and would go back to Europe and then return, and he particularly at that meeting told me that he wanted to divorce Hoffacker from our business undertakings.

Q. Was the name Ulrich mentioned in this conversation? A. Yes. Then he told me he had an old friend who he thought very highly of named August Ulrich, and that he was going to ask Mr. Ulrich to represent him and ask for cooperation with him.

Q. By the way, where was this Palm Court you mentioned located, or Palm Room? Was it in the hotel? A.

Yes; on the ground floor of the hotel.

1932 Q. Of the Plaza Hotel? A. Plaza Hotel.

Q. Now, did you see Frankenberg again on that same visit to New York? A. Yes.

Q. When did you see him? A. Well, I think the same evening he and Fritz von Opel invited Mrs. Crittenden and myself for dinner, and we had dinner at the Plaza.

Q. Was there any business discussion at this dinner? A. No, purely social.

Q. After this New York meeting what did you do? A. Returned to Shreveport.

Q. Was anything done about the consolidation of the companies? A. Yes. The consolidation of the companies went ahead promptly upon the return of all of us to New York, I would have said quite early—it was started quite early in September of '37.

Q. When would you say that the consolidation was accomplished? A. Well, late '37 or early '38. There was a lot of detail to it.

Q. And under what name were these enterprises consolidated? A. Hurricane Petroleum.

Q. Now, directing your attention to the year 1938, did you meet Frankenberg in 1938? A. Yes.

Q. Where did you meet him? A. In Shreveport.

Q. What discussions did you have with Frankenberg in Shreveport? A. Well, he and Mr. von Opel were there together, and we reviewed—made a forecast of operations, and Dr. Frankenberg was utterly candid in stating that he wanted to get in a more liquid position, and he asked that we sell sufficient properties in order that the bond money of funds owed by Uebersee could be redeemed; and Mr. von Opel stated that that was his point of view, and he regretted that the situation changed.

Q. Were all the assets to be sold? A. No.

Q. Will you tell us what the proposal was? A. No; a fair enough proposal was put. Sell sufficient of the salable assets to redeem the bonds, the remainder of the proceeds

of the sale to remain in the company for two purposes, to pay obligations and to provide working capital.

Q. Were actions taken as a result of this discussion?

A. Yes.

1934 Q. And what happened? A. Some months later the crude oil producing properties in the East Texas Fields were sold; the bonds redeemed, part of the funds distributed to pay debt and part for working capital.

Q. The payments for redemption of the bonds were made to whom? A. Well, I don't recall the name of the bank, but it was made to a bank or a trustee.

Q. What was the total amount of the proceeds of this sale of property, approximately? A. I think the gross of the sale was about \$1,450,000. There might have been \$300,000 worth of outstanding bonds. This is memory—16 years ago.

Q. By the way, shortly before you mentioned the name of Ulrich. What office did he hold in this corporation? A. He took—Hoffacker's resignations were accepted, and Ulrich was an officer in Hoffacker's capacity and without salary.

Q. Did he succeed Hoffacker as president? A. As I remember it, he did.

Q. Now, did you remain associated with Hurricane Petroleum Corporation? A. No, not for very long. Mr. Ulrich and I did not get along at all, and his public utterances and his behavior in Baton Rouge and in 1935 Shreveport destroyed every vestige of credit we had, and I took him to task on the subject, and he asked for my resignation, and I told him I would give it; and I cabled Fritz von Opel at Kampen Sylt between the time that Ulrich asked for my resignation and the time I gave it and told him that Ulrich's utterances were such that the local banks refused any further financial support, and got an answer that he was powerless to assist.

I then tendered my resignation.

Q. When did you tender that resignation? A. Well, in the middle of '38.

Q. Middle of '38? A. Yes.

Q. Did you ever have any further business dealings with Fritz von Opel after your resignation? A. No.

Q. Did you ever have further business dealings with Mr. Frankenberg after your resignation? A. Business dealings?

Q. That is right. A. No.

Q. Did you ever see either of them again? A. Yes. I called on Dr. Frankenberg in his office on Broad Street, purely a social call, based on meeting Isadore Kresel in a camp in Maine.

1936 Q. When was this? A. I guess '40.

Q. 1940? A. Yes.

Q. Now, directing your attention again to the year 1938, did you ever have any discussions with Fritz von Opel concerning hydraulic pumps? A. Yes.

Q. Will you tell us what those discussions were? A. As I recall it, at the date of the last meeting in Shreveport with Dr. Frankenberg and Mr. von Opel, he related to me that the German government had requested his father or himself to consider the construction of two types of manufacturing plants, one a plant to manufacture light structural buildings and the other to manufacture radiators, and there was involved in each hydraulic pressing equipment; and I gave him, as I recall it, the name of some American manufacturers of hydraulic systems.

Q. Did you also have a discussion with him about flash welding? A. Yes, and gave him the name of a group in New York who had perfected the flash welding process of manufacturing paper-thin copper radiators.

Q. Were you told what these radiators were for? A. As I recall it, it was part of a German national 1937 scheme, maybe a Strength Through Joy movement. They were going to manufacture low-priced auto-

mobiles. They were going to produce low-cost housing. Each of these ventures would have been dovetailed into that national move.

Q. The radiators were for the housing? A. I guess so.

Q. Now, did you have any discussions in the year 1938 with Mr. Fritz von Opel concerning drilling equipment?

A. Yes; the same visit.

Q. The same visit? A. He told me that he had an interest in aluminum ore-bearing properties in Hungary. Labor was very cheap. The problem was to get more ore out, and he would like to inspect American building equipment.

I made arrangements with one of the local companies to show him a star drilling machine and a core drilling machine and, as I recall it, furnished the names of corporations with New York addresses which could give him details as to cost, and so forth.

Q. Did you have any further conversations with him as to this aluminum property in Hungary? A. Oh, yes; both him and Dr. Frankenberg. There was a general discussion—going back to Europe, and I was going to take a walking tour with the Doctor, and Fritz was going to drive me to Hungary.

1938 Q. To Hungary? A. Yes.

Q. For what purpose? A. To show these ore mines. He told me they shipped quite a lot of ore to Germany, they did not get money for it and his father did not like it very much.

Q. Did you have any discussion in the year 1938 with Mr. Fritz von Opel about income taxes? A. Yes. He suggested to me that there would be a very substantial income tax payable by Grogan and myself.

He suggested that we might take meager profits in the company, take title to funds in Switzerland, avoid payment of the tax.

Nothing was ever done beyond commenting on it that I did not think he appreciated how far reaching the Government would be in looking for those taxes.

Mr. Baum: You may inquire.

Mr. Ingoldsby: Read me the last question and answer.

(The last question and answer were read by the reporter.)

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Crittenden, I want to ask you about the first occasion when you met Mr. von Opel. Will you state the date as nearly as you can recall it? A. Let's see. I would say in the spring or summer of 1933.

1939 Q. Spring or summer of 1933, and I believe that you stated you met him either in Shreveport, Louisiana, or in New York City; is that correct? A. No; in Scarsdale.

Q. Scarsdale. Let me refresh your recollection. Didn't you meet him in Shreveport, Louisiana? A. Yes, many times.

Q. I mean the first time. A. I made the statement that I can't remember whether I met him in Hoffacker's house in Scarsdale first or in Shreveport first. I don't recollect.

Q. Do you remember that he was driving a yellow Mercedes car when you first met him? A. I remember he had such a car in Shreveport. It broke down.

Q. Because it broke down? A. Well, it broke down and there was a great local furor in getting that car under way again.

Q. A very flashy looking car, wasn't it? A. Yes, and Fritz looked funny to that public. He had a beret and funny looking clothes. It all looked funny to the Southerner in Shreveport.

Q. And that was in 1933, wasn't it? A. As I remember it, it was.

1940 Q. Wasn't it the occasion when you first met Mr. von Opel? A. I don't recall whether I met him in Scarsdale first or in Shreveport first.

Q. Where did he go from Shreveport when he left? Do you know? A. Now you have refreshed my memory. I am going to change the date. I think it was quite late in '33 that he was in Shreveport.

Q. In fact, it was in the winter, wasn't it? A. Because he and Hoffacker started off and they got stranded in the hills of Alabama some place. That created another furor. There were blankets around their heads. They skidded. We got telephone calls.

Q. When was that? A. Very late in '33 or early in '34, but suffice it to say that it was cold enough to create ice on the road.

Q. Did you ever see that car again? A. I never saw it at any time.

Q. I see. A. I heard about it, but I never saw it.

Q. You are presently employed with a firm named Westcott and Mapes; is that correct? A. That is correct.

Q. A civil engineering firm? A. Yes, consulting 1941 engineers.

Q. Where are their offices? A. Their office is at 109 Church Street, New Haven, Connecticut.

Q. When you first became acquainted with Mr. Hoffacker you were engaged in business for yourself; is that correct? A. That is correct.

Q. Did you close this business when you went with the von Opel oil properties? A. No.

Q. That business remained open? A. Yes, for several years, until this consolidation of all of the properties into the Hurricane Corporation. Then all of the interest owned by Crittenden Engineering was purchased and the company liquidated and, I think, extinguished. I am not sure of the latter. I know it ceased to operate under the name of Crittenden Engineering.

Q. In what year? A. I would have said in '37.

Q. What finally became of the Hurricane properties? A. I don't know; went to bankruptcy.

Q. They did go into bankruptcy, didn't they? A. I understand. I wasn't there.

Q. At that time was the Grogan Oil Company 1942 merged with Hurricane? A. Never.

Q. That was not? A. Never, to my knowledge.

Q. Did the Grogan Oil Company go into bankruptcy, too? A. Not to my knowledge.

Q. Regarding your first meeting with Hoffacker, with relation to Mr. von Opel, I believe it was your testimony on direct examination that Hoffacker told you that he was an adviser, an agent, of Fritz von Opel; is that correct? A. Yes.

Q. And it is your further testimony that he never deviated from that statement; is that correct? A. Never.

Q. The first employment you had concerning Fritz von Opel or Crittenden was to conduct this survey of oil properties in the Southwest; is that correct? A. Now, your question again?

Mr. Ingoldsby: Read it.

(The last question was read by the reporter.)

The Witness: No.

By Mr. Ingoldsby:

Q. Was it? A. No.

Q. What was the first development? A. It was between Theodore Hoffacker, agent, and Crittenden 1943 Engineering.

Q. Yes. I was asking you the purpose of the first employment of the Crittenden Engineering firm. A. Was to make a survey of potential investments in the oil business.

Q. When did you first meet Mr. Bayer? A. I met—

Q. Just your best recollection. A. Well, as I recall it,

I did not meet Bayer until operations of Oil Refineries, Incorporated had been established and the first audit made. I would think maybe that is '33 or '34.

Q. I believe that you said that Bayer usually referred to the owners or the boss, or whatever it may be, as the Germans; is that correct? A. Usually the Germans.

Q. Was that customarily the term applied? A. Yes.

Q. And did you use that term also? A. Yes.

Q. And that term never designated any particular Germans, did it? A. Hoffacker and von Opel.

Q. That was what was generally understood—1944 Hoffacker and von Opel? A. Yes.

Q. Is that what you generally understood by the term "Germans"? A. It was loosely used, yes. In the daily conduct of business, it was the Germans.

Q. What was your understanding of that term? A. Beg your pardon?

Q. What was your understanding of that term? Was it Hoffacker and Fritz von Opel? A. Well, my more specific understanding of that term was that Fritz von Opel had had entrusted to him by his father a considerable sum of money, was handling those funds through a usufruct contract, and that Theodore Hoffacker was agent for Fritz von Opel, and that Fritz von Opel did not breathe, move, or talk without his permission and his advice.

Q. Now, how did you get all that impression? A. Well, Hoffacker's utterances were so preposterous that we had them looked up. This was no idle talk. He made him out an incompetent play boy and that he would have gone to the wall—

Q. That was in 1937? A. No; '33, '34, '35, '36, and '37, the whole time.

Q. And that was the general tenor; is that correct? A. Always.

Q. Finally, Fritz von Opel and Hoffacker had a 1945 break, didn't they? A. I don't know.

Q. Don't you know about that? A. No, sir.

Q. You do not know anything about any difficulties between Hoffacker and von Opel? A. Yes. I know one instance in which Hoffacker told me that he was what I was pleased to term going to blackmail Fritz, and he told me his whole plan in New York, and he wanted me to join in it, and I said I would have nothing to do with it.

He tried to persuade me to join him in it, and I went down to the steamship he was sailing on, and he took me downstairs to the cabin, and he told me all about it; and I told him no, I would have nothing to do with it; and I went back and reported to Walter Bayer the name of the ship and the cabin number that Hoffacker had sailed on and the purpose of the trip.

That is the first and last and altogether that I know—

Q. Well, then, you did know about difficulty between Hoffacker and Fritz von Opel, didn't you? A. Well, after he had related to me a blackmailing expedition, I took action, sure.

Q. You stated that the impression you gained, you gained as a result of your knowledge of the usufruct contract, is that correct? A. The usufruct contract?

Q. Yes. A. Yes.

Q. Will you explain what you understand the usufruct contract to be? A. In this case—I will confine it to this case—

Q. All right. A. Fritz's father—

Q. Let me start at the beginning.

Mr. Burling: Let the witness finish, please. If Your Honor please, counsel interrupted the witness.

The Court: All right. Let him complete his answer. Then ask him another question.

Mr. Ingoldsby: Well, I would like to start at the beginning by asking him what he understands by usufruct before we start talking about usufruct contracts.

Mr. Burling: May I respectfully request that the witness be permitted to finish his previous statement which he started and which he interrupted.

The Court: Proceed.

By Mr. Ingoldsby:

A. My understanding,—my personal understanding;
1947 Q. Yes. A. Oh, the obvious thing. The use of the fruit of the proceeds. I don't think it means anything. Based on what Fritz told me, it was quite clear.

Q. All right. What was that? A. That a considerable sum of money derived from the sale of the Opel Motor Works and in one of the banks in New York had been entrusted to him by his father to be invested and to be handled; that his agreement with his father was specified under what he described to me as a usufruct contract; that his living expenses and traveling expenses and sporting expenses, and so forth, were derived from the earnings and the proceeds of the use of these funds; and that Theodore Hoffacker was his agent, subsequently much to the concern of his father—my understanding.

Q. That was your understanding? A. Yes, sir.

Q. From what Fritz told you? A. From what Fritz told me and from what Hoffacker represented to us.

Q. Did you ever see the gift agreement? A. No, sir, I never saw any agreement. Listen, let me cut it all short and quick. I recite to you my memory of conversations.

Q. I appreciate that this is many years ago. I am not trying to trip you on any details. I am simply asking if you saw any agreement. A. No. That was described to me as the usufruct contract.
1948

Q. At the time that you had that discussion did you ever hear of 20 percent and 80 percent—these figures? A. No, sir, no percentages.

Q. You did not? A. No, sir.

Q. No percentages? A. No percentages. All I understood with respect to partition, that Fritz derived his income from the proceeds, profits of the handling of this fund.

Q. I want to ask you a question about the conferences which you have described in Zurich, Switzerland, regarding the oil company mergers: A. Yes, sir.

Q. Will you state again, please, when it was you went to Switzerland? A. Well, July or August of 1937.

Q. And did I understand you to state that you spent about three weeks in Switzerland on this occasion? A. I think so.

Q. And were you in conference during that entire period of time? A. No; no. We were in conference nearly 1949 all of the time that Dr. Frankenberg was there, and there were periods that he was absent, and during one of those periods it was long enough to take an automobile tour through Switzerland, which was recommended by Mr. von Opel, and we took it, went through parts of Switzerland and into Italy.

Q. What is your best recollection at the present time as to the length of time that you actually spent in Switzerland? A. Actually spent in Switzerland. I think the better part of three weeks.

Q. And how many conferences would you say you had in that period of time with Fritz von Opel? A. About ten, twelve.

Q. You think maybe ten conferences? A. Yes.

Q. And was Frankenberg present at each of those conferences? A. Yes.

Q. Frankenberg was present? A. Put it this way. Fritz von Opel was present in all but one, which was held in the Dolder Hotel on a very technical matter concerning accounting.

Q. All of the rest of the conferences were held in the offices of the board room of the Adler Bank, were they not?

A. Oh, now, I don't know about that. All I know I 1950 was, I was in Frankenberg's and Gaeng's office on Peterstrasse. I don't know anything about those offices of the bank.

Q. You mean Frankenberg? A. Frankenberg.

Q. Was not Frankenberg's office in the bank? A. I don't know. I really don't know. I was directed where to go, given an address, and went there. It was in the offices of Frankenberg and Gaeng.

Q. Now, with reference to the time that you spent there, I am going to ask if this will refresh your recollection. I am going to ask you to assume that the following dates and places that I read to you come from the notes of Bayer and Crittenden.

On July 29, 1937, you arrived in Cherbourg. On July 30 you arrived in Paris and left for Switzerland on the same day. On July 31 you arrived in Zurich. August 1 was a Sunday, so nothing was done, and on the 2nd, 3rd, 4th, and 5th there was a business conference on each one of those days, and August 6th, 7th, 8th, and 9th were spent in an auto trip through Switzerland, and that on August 10 you returned to Zurich, and on August 11th and 12th you left Zurich. A. It sounds reasonable.

Q. Would that sound about right to you? A. Yes.

Q. So the only time that was actually spent trans- 1951 acting any business was August 2nd, 3rd, 4th, and 5th. Would that be about correct? A. Well, I would have thought, by the nature of things, that we probably concluded our business the last day or two days that we were there.

Mr. Ingoldsby: Your Honor, I have a subject that I am going to go into at some length. Does Your Honor plan on recessing for luncheon?

The Court: Can't you use the remaining time?

Mr. Ingoldsby: Yes, I can.

By Mr. Ingolsby:

Q. I want to ask you about your trip to Germany in the summer of 1937. Will you tell us, please, when it was that you left the United States? A. You mean the exact date?

Q. No; approximate date; the month. A. Well, wait a minute. Can you recall the date of the Coronation of the King of England?

Q. I most assuredly cannot. A. Well, I am in a bad fix. We sailed on the QUEEN MARY on a date that we could get a passage. It was very crowded on account of the Coronation. I would have said April or May, but I can't remember—wait a minute. We spent two weeks, three weeks, another week—that's four weeks—and wanted to get home—well, let's guess at April.

1952 Q. Now, where did you first go in Europe? A. Cherbourg and Paris.

Q. Did you meet Fritz von Opel there? A. No, sir.

Q. When did you first meet von Opel? A. The day following, in Berlin.

Q. And how long a time did you spend in Berlin on that occasion? A. As I recall, the better part of a week.

Q. And what was the purpose of spending the week in Berlin? A. Well, there was time consumed in arranging the conference date with the directors, the officials of this chemical corporation.

Q. Where were the conferences to be? A. Wherever Mr. von Opel could arrange that they would be, and they were held—the first conference, the director group, was held in Berlin.

Q. And where did you go from Berlin? A. We went to Essen.

Q. And did you confer in Essen on the same topic on which you conferred in Berlin? A. I have already testified that the conferences with the chemical group were held in their manufacturing plant offices at Oberhausen. We

stayed in Essen because there was a hotel there.
 1953 Q. And Oberhausen is near Essen, isn't it? A.
 Yes; not far away.

Q. What was it you were trying to accomplish by these conferences? A. We wished to develop the American rights—or, rather, we wished to consummate a contract to develop the American rights for manufacturing gasoline and other petroleum products synthetically under the patents and process rights of the so-called Fischer-Tropsch system.

Q. And that was a patented process to do what? A. Synthesize gas to liquid hydrocarbon.

The Court: I suppose this is a good place to stop. 2 o'clock.

(At 12:30 p. m. a recess was taken until 2 p. m.)

1954

AFTERNOON SESSION

(The trial was resumed at 2 p. m., upon the expiration of the recess.)

Thereupon, BUTLER PARNELL CRITTENDEN resumed the stand and, having been previously duly sworn, testified further as follows:

Cross Examination (Continued)

By Mr. Ingoldsby:

Q. Mr. Crittenden, we were talking about your trip to Germany in 1937. What was the result of that trip from the standpoint of whether or not you ever acquired the process you went there to investigate? A. We did not acquire it.

Q. Was that your final judgment in the matter? A. No.

We were notified by Mr. von Opel that the Ruhr Chemie had a contract or other arrangements, or prior contractual arrangement, with an American concern.

Q. You mentioned this morning that the crude oil producing properties which were first owned by Oil Production, Incorporated, and later by Hurricane, were sold for about \$1,400,000; is that correct? A. That is my remembrance.

Q. Did you approve of this sale, or did you feel that it should be kept and new capital added? A. I very strenuously took the position that if the company was going to continue, they should not sell those properties.

Q. You felt that the investment in those properties was a very good investment; is that correct? A. It had proven itself, and its potentialities, in my opinion, were very great.

Q. Returning, again, for a moment to your meeting in Zurich in 1937, did you mention some properties, in connection with that visit, which you and Grogan owned at the time of the Zurich meeting? A. Yes.

Q. Will you give me the names of those? A. Trio at Arp, Texas, and a small pipeline in conjunction with it; and DeSoto Crude Oil Purchasing Corporation, a pipeline system.

Q. What was that last one? A. DeSoto Crude Oil Purchasing Corporation.

Q. What was the value of those properties at the time of your meeting in 1937? A. Well, I don't recall now.

Q. Just give us your best estimate. A. A couple of hundred thousand dollars. Now, I take that as a rank, ancient memory.

Q. Now, who owned that? You and Grogan together? A. Yes.

Q. Are you able to give us an estimate of what those properties would be worth today? A. Three or four times their value based on increased costs, reproductive costs, earning value, and so forth.

Q. Would that also be based upon the potential which some of those properties had at the time and which have been established by virtue of the passage of time? A. What do you mean?

Q. I am referring to the output of the oil-producing properties. A. I have not included any oil-producing crude oil properties in this estimate. You asked for the properties owned by Grogan and Crittenden.

Q. That is right. A. None of them were crude oil producing properties.

Q. Did you own any crude oil producing properties? A. No.

Q. Now, with reference to the properties which you mentioned just before, that is, Trio and DeSoto— A. Yes.

Q. (Continuing) did those properties go into the merger which ultimated ended as Hurricane or which ultimately became Hurricane? A. As I remember it, they did.

1957 Q. What did you receive in exchange for those properties? A. Our management contract and, roughly, about a 22 to 25 per cent interest—stock interest—in the company.

Q. A 25 per cent interest in the newly formed Hurricane; is that correct? A. Yes.

Q. Did Hurricane operate successfully for a time? A. Yes.

Q. After Mr. Ulrich was put in charge of the Hurricane Corporation, did the company then get into difficulties? A. Immediately.

Q. What year was that? A. 1938.

Q. Can you give us the approximate month? A. Oh, let us say in the middle of the year, Mr. Ingoldshy.

Q. About the middle of 1938. Do you feel that the reason that the company got into difficulty in the middle of 1938 was a lack of capital? A. I do.

Q. You do feel that was it? A. That was one reason,

and it was—the principal reason was Mr. Ulrich's 1958 behavior and utterances. The banks we did business with came to us and said, "We can't go with you any longer."

Plans that we had, that were quite near fruition, which was principally a pipeline to pipe gasoline from seven or eight refiners in the East Texas fields and two or three refineries in Shreveport to the Mississippi River, which was our only way out at that time in marketing our goods in competition with refineries farther north. We needed to reduce our costs of transportation, and he just flatly, any time the subject came up with those jointly—conjointly—interested in the matter—he will have a good deal to do with it.

Q. So you feel that the failure of Hurricane was partially due to Ulrich's personality? A. No, not his personality.

Q. Well, his actions? A. What he said; what he did.

Q. Do you feel that the situation might have been different with regard to Hurricane had you continued in the management of the Hurricane company? A. Personally?

Q. Personally. A. No change. The harm had been done. They had sold the producing properties. There were 1959 not the operating funds to continue the company.

Q. My question is, if you had been in charge of the company, and if Mr. Ulrich had not been put in charge, do you feel that the result would have been different? A. Yes.

Q. In other words, you feel that the company probably would not have gone through difficulty? A. I feel this: that I probably could have completed negotiations for capital to acquire the pipeline and to do other things without the obstruction of Mr. Ulrich.

Q. Now— A. Now, let me explain the extent to which this was done and the earnestness which was displayed. Approximately ten small companies, subscribed, oh, \$20,000 to \$40,000 to make a survey of markets reachable by pipeline and water in the Mississippi Valley, our natural water-

way. The report was very favorable and, in addition to that, the venture was considered very favorable by two or three of the large companies who at that time were convinced that there was a war coming along and would have liked to have seen the whole thing consolidated into a picture of normal flow of goods at the lowest rates.

Q. I see. A. Now, that survey was completed, and the several members involved were ready to go ahead, 1960 and we did, with a company as reliable as White-Weld Company.

Now, Mr. Ulrich's stampeding around—he did not know what he was talking about—or he did—introduced a situation in which nobody would touch anything.

Q. I see. Generally speaking, the whole Ulrich situation was unsatisfactory from the standpoint of the operation of Hurricane; is that putting it succinctly? A. No, I don't believe it was. I think that the operation of the company with Ulrich as an officer—that its chances were gone. I think his behavior, at least prior to becoming an officer, sealed the story.

Q. Now, with reference to similar types of oil enterprises during the immediate pre-war period and the war period, practically all of those enterprises operated profitably, didn't they? A. Yes, all that I—now, wait a minute. Put your question again. That is very broad.

Q. I say that, generally speaking, the immediate pre-war period and the war period was a period of great prosperity for the oil industry, wasn't it? A. Tremendous.

Q. Wouldn't it be a fair statement to say that if this property had continued in operation the way you anticipated, it is reasonable to assume that this property also would have become a very successful operation? 1961 A. Yes, and far beyond any estimate that I would give you, in view of the fact of the value of crude oil reserves in the ground and the posted price of crude oil—the crude oil reserves in the ground together with the posted price of crude which ensued.

Q. I see. So— A. Each fact far in excess of any prediction or estimate I made to Dr. Frankenberg or Mr. von Opel.

Q. Are you in a position today to make an estimate of what those properties would have been worth today? A. No, I am not.

Q. Would it be a fair statement to say they would be worth several times what they were then worth? A. In my opinion, yes. You are talking about the properties in Hurricane before Hurricane divested itself of crude oil reserves?

Q. Yes, sir. A. That is right.

Q. Now, instead of that happening, Hurricane got into great financial difficulty and went bankrupt, didn't it? A. Yes.

Q. As a result of that bankruptcy, you personally lost, together with the others, didn't you? A. Everything. I turned in everything that I had.

Q. You lost everything that you had? A. In the 1962 company. Everything. I turned in my stock and took Grogan's note for \$40,000. He was indebted to the company. They owed me 18, 19, or 20.

Q. So, all told, how much do you feel you actually lost in Hurricane? A. You mean if they had yielded?

Q. First of all, I wanted to ask you just the way—taking things as they happened, how much did you lose? A. I lost, I guess, \$300,000—\$500,000.

Q. You feel, do you, that had things been different, and had the property been properly managed, it had a great potential; isn't that correct? A. No.

Q. You do not feel that? A. No. I have only one feeling. If the crude oil properties had not been sold, and the additional capital had been put in, everybody would have made an extremely large amount of money.

Q. So the potential that was lost was in fact much greater— A. When they sold the producing properties, a

tangible asset on which you could raise money at a bank for working capital to carry on your business.

Q. Are you through? A. Yes.

1963 Q. I did not mean to interrupt you. Go ahead if you have not finished your answer. A. I only make one more comment. The language used to Mr. Ulrich, which he did not understand, was always this: with this amount of money, we can buy this number of barrels of crude. And I took exception to it. The language used was they might buy that number of barrels a day of current production. They could not replace the asset value, the East Texas crude producing properties, that were in the ground and not producing. They could not have been replaced at that time. As a demonstration, they were sold, as I recall it, for \$1,450,000.

Mr. Ingoldsby: Thank you, sir.

Mr. Baum: No questions, Your Honor.

(The witness left the stand.)

Mr. Burling: We will call Miss Magdalena Schoch.

Thereupon, MAGDALENA SCHÖCH was called as a witness and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burling:

Q. Miss Schoch, where were you born? A. I was born and raised in Germany.

By the Court:

1964 Q. How do you spell your name? A. S-c-h-o-c-h.
My first name is M. Magdalena.

By Mr. Burling:

Q. Of what country are you presently a citizen? A. I am a citizen of the United States.

Q. Did you acquire citizenship by naturalization? A. Yes, by naturalization in 1943.

Q. Prior to that time you were a citizen of Germany? A. Yes.

Q. Are you a member of any bar? A. I am a member of the Bar of this Court.

Q. When were you admitted to the bar? A. I was admitted to the bar in 1947.

Q. Going back to Germany, will you state briefly what education you had in Germany? A. After elementary school and high school, I took a four-year law course in the law faculties of the Universities of Wurzburg and Munich, and I received the degree of doctor of laws.

Q. So you are entitled to be called Dr. Schoch if you so wish, is that correct? A. Well, if you like; I prefer to be called Miss Schoch.

Q. But are you entitled to be called "Doctor"? A. Yes.

1965 Q. After you received your doctor's degree, what did you do next? A. I became research assistant to Professor Mendelssohn-Bartholdy in the law faculty of the University of Hamburg, Germany.

Q. In addition to being research assistant to Professor Bartholdy, did you occupy any other position with the faculty at the University of Hamburg? A. I was appointed lecturer in the university; and in 1932, after having filled the usual requirements, I became a member of the law faculty with the title of Privatdozent.

Q. Did you hear Professor Kaufmann testify in this Court? A. Yes, I did.

Q. Did you hear him testify that he had become appointed a Privatdozent in the Swiss University? A. Yes.

Q. Did you hear him testify that that was a rank be-

tween an assistant and an associate professor in this country? A. Yes; that is what I would say.

Q. You agree with that? A. Yes.

Q. That is the academic rank— A. It is the 1966 German equivalent of the Swiss.

Q. Is that the academic rank which you held at the faculty at the University of Hamburg? A. Yes.

Q. Did you organize anything under Professor Mendelssohn-Bartholdy? A. I organized an institute for comparative and international law, together with Professor Mendelssohn-Bartholdy, and we also organized cabinet studies in that particular field.

Q. Going back to the time when you were made a member of the faculty at the University of Hamburg, will you state, if you have any personal knowledge, whether any other woman in the history of Germany had ever been made a professor of law in a German university before you had?

A. As far as I know, I was the first one to attain that status in a law faculty.

Q. Up until the time you left Germany, do you know of any other woman was ever made such? A. No.

Q. Will you state whether you taught any particular field of law; and if so, what? A. I taught conflict of laws, comparative law, also some fields of German law, such as a course which gave a general introduction in the 1967 civil law of Germany, and a course in bankruptcy; at one time also a course on jurisprudence.

Q. You did not become a member of the bar in Germany, did you? A. No, I did not.

Q. When did you come to the United States the first time, and under what circumstances? A. I first came to the United States in the fall of 1934 under a research fellowship of the Rockefeller Foundation.

Q. At the time you accepted the research fellowship of the Rockefeller Foundation, did you intend to emigrate from Germany, or did you intend merely to come here on a

trip and then return to Germany to live? A. I came here on a visitor's visa. I intended to return to Germany. As a matter of fact, this was one of the conditions of the Rockefeller grant.

Q. Specifically, did you return to Germany at the termination of the grant? A. Yes.

Q. Before you left Germany, did you make or file any paper, or did you cause to be filed any paper, with the German police authorities? A. I don't remember whether I personally filed it or whether my mother, with whom I lived at the time, filed it; but I know that—I remember 1968 her that a so-called abmeldung was filed with the police authorities in Germany, because I was leaving for one year.

Q. Will you state what an abmeldung was, who was required to file it, and under what circumstances?

Mr. Boland: I think we should wait until Miss Schoch is qualified to testify on German law. There are a few questions that I wish to ask her.

Mr. Burling: Certainly. I took it up in the middle of her qualifications because it came in that she personally filed one. I withdraw the question.

By Mr. Burling:

Q. What did you do while you were in the United States under the Rockefeller fellowship in 1934? A. I visited various law schools in this country with the particular purpose of studying methods of teaching conflict of laws and a more general purpose of studying the American system of conflict of laws.

Q. How long did the fellowship last? A. One year.

Q. After that was over, what did you do? A. I returned to Germany and resumed my duties at the University of Hamburg.

Q. Did there come a time when you again left German?

A. I left Germany in the fall of 1937 when an immigration visa and came to this country.

Q. Without going into details, will you state briefly why you left Germany in 1937? A. I left Germany because I was opposed to the Nazi regime and was not willing to compromise with the regime.

Q. When you arrived in the United States—or before that, where did you go when you left Germany? A. I came directly to the United States.

Q. Where did you go in the United States? A. I first went to stay in Buffalo, New York, and I spent one year studying and doing research work of my own until the fall of 1938.

Q. Then where did you go? A. Then I went to the Harvard Law School, where I had obtained a position as research associate.

Q. While you were research associate at the Harvard Law School did you work with any particular professor? A. I worked mostly with Professor Irwin Griswold, who is the present dean of the Harvard Law School. I taught in his seminar—on various seminars—on conflict of laws and comparative law.

Q. That is, you and the present dean of the law school jointly carried on a seminar in conflict of laws; is that right? A. That is correct.

1970 Q. How long did you remain at Harvard? A. I remained at Harvard for five years.

Q. Was there any other woman on the faculty of the Harvard Law School, by the way, when you were there?

A. No, there wasn't. Frankly speaking, I wasn't on the faculty; I was associated with the faculty.

Q. Does Harvard have a library of foreign law materials? A. Oh, yes; Harvard Law School has a very extensive library on foreign law.

Q. After you left Harvard, what did you do next? A. I was appointed to a position in the Office of Economic

Warfare in Washington, which later was reorganized into the Foreign Economic Administration. I first was a consultant on German law in the Reoccupation Division of the Office of Economic Warfare.

Q. At the end of your employment by the FEA, what was your position? A. I was a section chief in the property division of the FEA; and during the last month I was acting division chief.

Q. You were acting division chief of what division? A. Of the property division of the German branch of FEA.

Q. Did your duties in that connection involve any 1971 matters involving German law? A. Yes; my work was mainly concerned with German law.

Q. Following your departure from the FEA, where did you go next? A. I left FEA in December, 1945, and went for a brief employment with the Practising Law Institute in New York.

Q. And after that? A. After that I came to the Department of Justice at Washington as a foreign expert in the Claims Division.

Q. What did you do after that? A. At present I am an attorney in the Office of Alien Property.

Q. Your duties were transferred from the Claims Division to the Office of Alien Property; is that correct? A. Yes.

Q. You are presently an attorney in the litigation branch of the Office of Alien Property? A. Yes.

Q. Have you ever published any books or articles on legal subjects? A. Yes, I have.

Q. In what languages? A. In the German language in Germany, and in the English language in this country.

1972 Q. Have you ever testified as an expert witness, as an expert on German law, before? A. Yes, I have.

Q. Will you state in what courts? A. In the state court of California—in two state courts in California—in the

Federal Court at Miami and in Federal Court in Boston—
Federal District Court in Boston.

Q. Now, will you go back to the question of the abmel-
dung—

Mr. Boland: I have a few questions I should like to ask
this woman on qualifications.

The Court: All right.

By Mr. Boland:

Q. You stated you are a member of the Bar of this Court,
Miss Schoch? A. Yes.

Q. And that you are not a member of the bar of any other
court; is that right? A. That is right.

Q. You are not admitted to practice in Germany? A.
No.

Q. Not admitted to practice at all in Germany? A. No.

Q. In those cases in which you have testified as
1973 an expert, what was the nature of your testimony?

A. The testimony was concerning, in the California
courts, the question of the German inheritance law and
German foreign exchange control law.

In Miami my testimony was on foreign exchange—Ger-
man foreign exchange control legislation.

In Boston I testified on certain aspects of German patent
law.

Q. Your qualifications seem to indicate that you spend
most of your time in conflicts of law—international conflicts
of law. A. Conflict of laws and comparative law, I would
say.

Mr. Boland: I should like to call upon the Government
to give the nature of this woman's testimony in respect
of expert testimony.

Mr. Burling: If Your Honor please, it is a matter which
I think will take perhaps three hours of testimony.

Mr. Boland: Just briefly the nature in which you are expecting her to testify and the subjects to be covered.

Mr. Burling: In relation to the German law of usufruct, in relation to the German law on foreign exchange; also in relation to how the German courts would construe the instrument which is Plaintiff's Exhibit 5, which plaintiff's law expert, Professor Kronstein, has testified to at such length. There are various other topics; that is the 1974 most significant.

Mr. Boland: I think, Your Honor, we shall have to object to her qualifications on the ground that she is not qualified to practice law in Germany.

The Court: I do not think that would be necessary.

Mr. Boland: I think it would be an important element.

The court: Nonadmission to practice might be taken by a lawyer here in this country to mean that one might know more law than all of us.

Mr. Boland: That may well be.

The Court: She evidently has had a pretty good background of study and experience in German law. I think certainly on foreign exchange she is an expert. She has qualified on that.

By The Court:

Q. What has been your experience in regard to the study of these usufruct provisions? What has been your experience along that line? A. Well, my own study and my own teaching experience.

Q. You had that up in connection with comparative law studies? A. Oh, yes, yes.

Q. In other words, you made these comparative law studies, and you studied conflict of laws in connection with that? A. Yes, Your Honor.

1975 The Court: I think she has made out a prima facie case as an expert.

Mr. Boland: I will keep that in mind.

The Court: It may be later on that you can argue she does not know as much as others. We will see about that. But I think she has made out a prima facie case as an expert. I will permit her to testify. You may call my attention to any specific subjects on which you think she is not qualified.

Mr. Boland: I will, Your Honor.

By Mr. Burling:

Q. Now, Miss Schoch, will you go back to the question of the abmeldung which you filed in 1934, or which you think—I correct myself—either you filed or you think your mother filed with the police? Will you state what an abmeldung was and who was required to file it and under what circumstances, as a matter of German law?

A. The abmeldung was a part of the police registration system, and the abmeldung, or the report out, or the checking out, had to be filed by anybody who left his abode inside Germany for more than a brief temporary absence. For instance, when I went to study in the University of Munich, I had to report out to the police at Wurzburg, where I was living at the time; and 1976 when I left the University of Munich to return to Wurzburg, I had again to file this ameldung; and the same was true when I left for the United States.

Q. In other words, an abmeldung was a document which you had to file when you left for any considerable period, whether or not you intended to return to the place which you were leaving; is that correct? A. That is correct.

Q. And it was not confined solely to persons intending to leave forever? A. Oh, no.

Q. Now, are you familiar with the regulations, orders, and statutes relating to foreign exchange control which were promulgated by the German Government? A. Yes, I am.

Q. Addressing your attention to a period before the summer of 1931 and not going back beyond the 1924 inflation, what controls were there on the possession of foreign exchange or foreign securities by German residents? A. There were no such controls.

Q. That is to say, a man residing in Germany could own American securities or American dollars in an American bank without any requirement for control? A. Yes.

Q. When was the first control imposed on such possession of foreign exchange or foreign securities?

A. On the 15th of July, 1931.

Q. Did the imposition of those controls follow any particular governmental problem or governmental event?

A. The followed upon the bank holiday which had been declared on the 13th of July, due to the financial collapse of Germany.

Q. Did any particular bank collapse at this time? A. Yes; one of the leading banks of Germany.

Q. By the way, on July 15, 1931, do you recall who was President of Germany? A. Hindenburg.

Q. Who was Chancellor? A. Bruening was Chancellor.

Q. That was not a part of the Nazi regime, was it? A. No.

Q. What was the Constitution of Germany at this time? Can you name it? A. The Weimar Constitution.

Q. Was there any article of the Weimar Constitution which gave the Chancellor or the Reichspresident power to impose emergency decrees? A. Article 48 of the Weimar Constitution enabled the President to issue emergency decrees permitting the ordinary legislative courses.

1978 Q. What was the general nature of the decree of July 15, 1931? A. Well, the first decree issued by the President was a decree enabling the government of the Reich to issue legislation—orders—regulating foreign currency.

Q. In other words, on July 15, 1931, President Hindenburg exercised his powers under Article 48 of the Weimar Constitution to authorize the Government to issue emergency decrees on this subject; is that correct? A. Yes.

Q. Will you state, if you know, what the definition of the term "foreign exchange" was for the purposes of the German foreign exchange control regulation? A. Foreign exchange was defined, I think, for the first time in the July 15 decree as foreign currency, including checks and bills of exchange, claims payable in foreign currency, foreign securities, precious metals, particularly gold. I think that was the definition in July, 1931; if I remember correctly.

(A document was marked as Defendant's Exhibit 113 for identification.)

By Mr. Burling:

Q. I show you Defendant's Exhibit 113-A and ask you if you recognize this as a photostat of the Reichsgesetzblatt. A. Yes.

1979 Q. For October 2nd—including an order issued October 2, 1931? A. Yes. This is the joint order issued by the Reich Minister of Finance and the Reich Minister of Economic Affairs, containing rules and regulations, number 6 implementing the decree of the Reichspresident concerning foreign exchange controls.

The decree referred to is a decree of August 1, 1931, which formed the basis for subsequent rules and regulations.

Q. I ask you specifically to state what the definition of foreign exchange was as provided in this order. A. I find in Section 1 the following definition: Foreign currency; claims payable in foreign currency; foreign securities acquired after July 12, 1931, and German securities

payable in a foreign currency which are not admitted in a German exchange; gold. That is all.

Mr. Burling: If Your Honor please, we are able to locate only the English copy of Defendant's Exhibit 31. It is the Reichsgesetzblatt containing the decree of August 1, 1931.

Do you agree that we may proceed with it? I do not believe there is any doubt about the authenticity of the document. Professor Kronstein identified it in English and in German; but the German seems to be missing at the moment. I ask Your Honor's permission to proceed 1980 with this.

The Court: All right.

By Mr. Burling:

Q. No, I offer in evidence Defendant's Exhibit 113-A, and I ask you to examine Defendant's Exhibit 31 and state if that is a translation of the order of August 1, 1931. A. Yes.

Q. Are you familiar with the terms of that presidential order? A. Yes, I am.

Q. Now following the orders of August 1, 1931, and October 2— A. This is October 2.

Q. (Continuing) and the order of October 2, 1931, to whom were the regulations regarding possession of foreign exchange applicable as a matter of German law? A. This legislation and these rules were applicable to German residents.

Q. Will you state what was meant by "a German resident," if you know? A. A German resident was a person who had his home, his place of living, inside Germany; or a corporation which had its place of management in Germany.

Q. What relevancy, if any, did citizenship have 1981 to those regulations? A. None whatsoever.

Q. Was a person who was a German national,

but who was physically living outside of Germany, subjected to the regulations? A. No; he was not a resident in the meaning of those regulations.

Mr. Boland: By "a national," do you mean a citizen?

Mr. Burling: A citizen.

Mr. Boland: Yes; of course.

By Mr. Burling:

Q. Is there a phase in German law governing a person who was subject to the foreign exchange regulations? A. The foreign exchange laws distinguished between inlander and auslander, and the expression generally used was devisen auslander and devisen inlander.

Q. Will you state the definition of each of those terms?

A. A devisen auslander was the person residing outside of Germany and not subject to the foreign exchange control laws. A devisen inlander was a person residing in Germany and subject to this legislation.

Q. On and after October 2, 1931, will you state what the obligation of a devisen inlander was with respect to foreign exchange or foreign securities which he might happen to hold or own? A. Beginning on October 2, 1931, a German resident was under an obligation to tender to the Reichsbank any foreign exchange that he had or acquired within three days after acquiring such foreign exchange. He had to tender it to the Reichsbank for conversion into reichsmarks.

Q. Will you take the hypothesis that a German resident, a devisen inlander, had, let us say, a thousand shares of General Motors stock situated in a bank in the United States. His obligation would be what? A. His obligation would be to report and tender these foreign securities to the Reichsbank.

Q. Assume that the Reichsbank then acquired the securities from him. Was the law that the Reichsbank was to

pay in dollars or in marks? A. The Reichsbank paid the equivalent in reichsmarks.

Q. That is to say, if a devisen inlander complied with the law and tendered a thousand shares of General Motors stock, the Reichsbank would be required to offer him the price of the stock calculated in marks and deposit to his account or otherwise pay him marks; is that correct?

A. Yes.

By The Court:

Q. What was that date? A. October 2, 1931.

Mr. Burling: I am not sure whether I have 1983 already offered Defendant's Exhibit 31. I now do, Your Honor. That is the order of October 2, 1931.

(Defendant's Exhibit 31 was offered in evidence.)

By Mr. Burling:

Q. Was there any order promulgated which defined the obligation of the Reichsbank; that is to say, what it was to do when the securities were tendered? A. I think the obligation of the Reichsbank was first defined in the executive order of July 18, 1931.

Q. I now show you Defendant's Exhibit 114-A and ask you if that is the executive order to which you have reference. A. Yes, that is the executive order of the Reichspräsident to prevent flight of capital and tax evasion, of July 18, 1931.

Q. Will you state what the criterion was which the Reichsbank was directed to observe in determining whether or not to acquire foreign securities against marks? A. A person subject to the duty to tender could apply to the Reichsbank for permission to keep such foreign assets on the ground that those foreign assets or this foreign exchange was required for purposes which were justifiable

from the point of view of the German economy, and the Reichsbank was authorized to make that determination and grant such permission.

1984 Q. In other words, if the Reichsbank found, on the basis of the showing of the devisen inlander, that it would be useful to the German economy to permit him to hold his foreign securities, then the Reichsbank could do so? A. Yes.

Q. But if that showing was not made, then the Reichsbank was directed to acquire securities against mark payment; is that correct? A. Yes.

Q. I ask you to assume this hypothesis: Suppose that A, a devisen inlander, had a thousand shares of General Motors stock held by a New York Bank. Then suppose that the devisen inlander went to the Reichsbank and said, "I wish to hold these shares, because I think the mark may become inflated or otherwise valueless, and I would prefer to have my securities abroad." Would that have been a showing sufficient to satisfy the executive order of July 18? A. No, definitely not.

Q. In other words, a showing by a German resident that he was afraid that the German economy might collapse and, therefore, wanted his capital abroad would not be enough? A. No, because the purpose of this decree was precisely to prevent the flight of capital abroad and
1985 to obtain for the Reich the benefit of all German-owned foreign exchange and foreign assets.

Q. A little more specifically, it is correct, is it not, that a dollar account in a New York bank would be regarded as foreign exchange for the purpose of those regulations? A. Yes.

It is also correct, is it not, that shares of stock in American corporations would be regarded as foreign exchange for the purpose of those regulations? A. Yes.

Q. That is true of shares of a Swiss holding company, is it not? A. Yes.

Q. Is it not also correct that a German citizen or

national—I take it the words are interchangeable—who did not reside in Germany had no obligation whatever to tender foreign exchange to the Reichsbank? A. That is correct.

Q. Now, let us suppose that on October 2, 1931, a person who was resident in Germany decided that he wanted to keep or take his assets outside of Germany because he was afraid that the German economy might collapse. Could he do so under the terms of the regulations without tendering the assets to the Reichsbank? A. He could not transfer his German holdings into foreign exchange and thus transfer them outside of Germany, with the exception of a very small exempt amount.

Q. What was that exemption? Do you remember? A. I think at first the exemption was 20,000 reichsmarks. By October 31 it was lowered to 200 reichsmarks.

Q. In any event, it was nothing like 15,000,000 reichsmarks, was it? A. No.

Q. Will you explain why if someone who was a German resident had foreign exchange he could not move outside of Germany and thereby become a devisen auslander and thereby avoid the regulations? A. He could move outside of Germany if he decided that he wasn't going back to Germany and that he was willing to leave his German assets behind, which might be confiscated by the Reich as a fine for his failure to report these foreign assets and tender his foreign exchange.

Q. But, as a matter of German law, you could not leave Germany and become a devisen auslander if once you were a devisen inlander; is that correct? That is to say, a man who on October 2, 1931, was a resident of Germany could not avoid the effect of the regulations by departing from Germany; is that correct? A. No.

1987 Q. Will you explain that, please? A. The obligation to tender his foreign exchange to the Reichsbank was immediately; and if he was still in Germany at the time that this decree entered into effect, he was

under that obligation, and failure to comply would have made him liable to penalties?

Q. So if we assume that a man on October 2, 1931, who was residing in Germany had the equivalent of 15,000,000 marks in New York and perhaps another 20,000,000 inside Germany, he could not move out to save the 15,000,000 without sacrificing the 20,000,000; is that correct? A. Yes.

Q. I wish to direct your attention to another problem of the German law. Are you familiar with the German Civil Code? A. Yes, I think I am.

Q. Have you ever studied it? A. Yes, I have.

Q. In fact for many years; is that correct? A. Yes.

Q. Are you familiar with Section 117 of the Code? A. Yes. That is a section which deals with sham transactions.

Q. What is the German title of Section 117? A. 1988 Section 117 speaks of *scheingeschaeft*.

Q. Do you have any difficulty of any sort in translating that word? A. No. I translate as "sham transaction."

Q. What does the German Civil Code provide with respect to sham transactions? A. It provides, if I may give a rough translation, that where a declaration of intention which is to be made towards another person is, with the consent of that person or in agreement with that person, a sham, it is void.

Q. I want to ask you a hypothetical question. Suppose that in 1931 I had been of legal age in Germany. Suppose my father had said to me, "I am going to purport to give you \$3,700,000. But it is to be understood by both of us that it is not a real gift but merely a device of getting around the foreign exchange regulations. You invest the money and take 20 per cent of the income as a fee, but understand that the money is really mine."

Then suppose that a formal deed of gift had been prepared. I will ask you: Would title have passed to the money? A. If I agreed with you that what was being done was not intended, then title would not have passed. The purported transaction would be null and void.

Q. That is true even if there was a formal written agreement executed by the parties; is that correct?

A. Yes.

Q. Did you hear Professor Kronstein testify concerning Section 117 of the German Civil Code? A. I did.

Q. Did you hear him testify that the German courts would be extremely loathe to find that an agreement which was reduced to a formal writing was in fact a sham transaction? A. I don't agree with him on that.

Q. I mean did you hear him state that? A. Yes, I did.

Q. Now I will ask you: Did you agree with Professor Kronstein on that point? A. I did not agree with him on that point.

Mr. Boland: Is this an answer coming from the reading of cases or from actual experience? It seems to me it might involve a mixture of reading of cases and of experience.

The Court: She has familiarized herself with interpretations; but you can bring out any weaknesses you may find.

By Mr. Burling:

Q. Can you answer my question? A. What was the last question?

1990 Mr. Burling: Would you read the last question, Mr. Reporter, please?

The Reporter (reading): "Now I will ask you: Did you agree with Professor Kronstein on that point?"

The Witness: I said that I did not agree with him on that point.

By Mr. Burling:

Q. Will you explain why you do not agree with him and what your own view is, please? A. I do not agree with

him for the reason that there are a large amount of cases in which the courts do find that, as a matter of fact, the parties did not intend the purported transaction, which as a rule is incorporated in a written document, and declare that it was null and void.

Q. Do you have the citations of any cases in the German courts in which transactions embodied in written instruments have been declared sham under Section 117 of the Code? A. Well, there is one form of sham transaction which was not uncommon where the transaction was incorporated in a notarized instrument. Those were cases of contracts for the sale of real property, where the parties in order to save taxes—stamp taxes and other taxes—stated the price at a lower amount than the actual amount

agreed upon. Those contracts were notarized documents, solemn documents, and yet there is quite a line of cases in which the German courts held such contracts void because one essential, namely, the price, was not stated correctly.

Q. Do you have any citations available to you, either with you or in your possession? A. I have some citations, if I may look them up, on this particular type of transaction.

Three citations from the official collection of decisions of the German Supreme Court: Volume 78, page 115; Volume 94, page 147; Volume 104, page 102.

Also a decision of the Supreme Court published in the *Leipziger Zeitschrift* for 1924, page 546, where the court mentions a consistent line of decisions established by this court—that is, a consistent line of decisions which held such contracts null and void. This is only one type of transactions which the courts held void under 117.

There is a great number of other instances. I cannot claim that I have read all the decisions because I think there are far too many. I think I have with me a compilation on sham transactions—a compilation and discussion

of cases of sham transactions—published by an attorney and notary in Berlin in 1931. The author is Albert Baer. This little compilation contains a great many illustrations of sham transactions.

Mr. Burling: If Your Honor please, this is a book 1992 that comes from the Library of Congress. I cannot make it a permanent part of the exhibits in this case. I ask leave to have it marked for identification. I will hand it to counsel.

The Court: Very well.

(The book referred to was marked as Defendant's Exhibit 115 for identification.)

By the Court:

Q. I think maybe I interpreted Dr. Kronstein's testimony a little different from the way you did. Maybe you can help me a little on it. I rather understood or gathered from his testimony that the German courts would require a clear and convincing testimony when a solemn document appeared, such as we sometimes require over here in this country before we will require specific performance, and the like. We have to have clear, convincing testimony. That does not mean you cannot prove sham, as I understand, but they would want rather clear testimony. Did you find the rule contrary to that, or am I mistaken about that? A. Well, surely, it is a question of evidence; but the evidence that the courts take into consideration is an examination of all the surrounding circumstances.

Q. Surely; they do it in any court. But what I understood him to say, now, was, like we have over here, 1993 that certain types of cases, as you probably know from your study of comparative law, are in common law governed by rule of practice or rule of law—that even when he does investigate, the evidence has to be clear and

convincing. A. No, there is no such technical rule of evidence in the German law.

Q. What I was wondering was if you found anything like that in any of the cases on it.

Mr. Burling: I don't believe the positions of the parties are very far apart; it is a matter of degree rather than principle.

The Court: I know, but there is in this country a provision with regard to certain types of cases that the evidence has to reach that height. The appellate courts sometimes reverse them if they do not reach that height. I do not know whether that is true in this case or not. You have a solemn document, and you have the person appear before a notary or some court official. I don't know whether the courts regard that as having any particular weight which requires a certain type of clear testimony to overcome it, or whether it is just the ordinary case. That is what I am trying to find out. I understood her to say she had not found any such expression in the German authorities.

1994. The Witness: There isn't any such special technical rule in Germany.

The Court: That is what I am talking about.

Mr. Burling: Thank you, Your Honor. You have clarified a point which I myself missed.

By Mr. Burling:

Q. Miss Schoch, I refer you to Defendant's Exhibit 115 as being a book relating to the cases on sham transactions for the purposes of Section 117 of the German Civil Code.
A. Yes.

Mr. Burling: I hand it to counsel.

By Mr. Burling:

Q. Are you familiar with the process which a German court would employ in determining whether a particular agreement was or was not a sham transaction? What evidence or what considerations would the court weigh? A. The Court would take into account all the circumstances surrounding the transaction—that is, the relationship of the parties, the circumstances, time and place when the purported transaction was gone through, the subsequent conduct of the parties.

Q. Specifically, let us suppose the hypothesis that a German court were considering whether or not a particular gift—that is, a transfer between father and son—was intended as a bona fide gift by the parties, or whether 1995 it was intended merely as a dodge by which the son, being a *devisen auslander*, could hold foreign securities for his father, who was a *devisen inlander*, and thereby avoid the necessity of turning over the securities to the Reichsbank for conversion into marks. Would the court first consider the relationship between the parties—whether it was cordial or uncordial? A. It would certainly consider that.

Q. Would it consider evidence concerning the motives of the father for transferring the property to the son rather than tendering the property to the Reichsbank? A. Yes.

Mr. Boland: Your Honor, I do not mean to bring this up continuously; however, it seems to me, from what I have read on this subject, that foreign law is a matter of fact, and this witness cannot testify as to what the court cases say or what the German Code says. If she has cases to back this up, I have no objection.

The Court: That might be true unless she has practiced in the courts.

— Mr. Boland: Without having had any practice, for her to state what the court is going to consider is highly speculative.

The Court: I should be surprised if they would not consider that, however.

1996 Mr. Boland: I doubt if she can testify.

The Court: I have some doubt about that.

Mr. Burling: If Your Honor please—

The Court: I am willing to hear you on it. If she had not had experience in the courts and had not had decisions on the subject, it might be speculative for her to say what they would receive.

Mr. Burling: A very considerable part of my argument on this point would relate to the great latitude which Your Honor gave Professor Kronstein, who testified as to how he would interpret particular documents.

Mr. Boland: Your Honor, he was qualified as having had many, many years of experience.

The Court: I understood that he actually practiced in the courts. If she says she has heard the courts rule and has had actual experience in the courts, that is different. I do not know that German textbooks on evidence would say whether you take into account the relationship of parties, or things like that. I doubt that.

Mr. Burling: May I inquire to see whether she is qualified?

The Court: If there is any textbook on it that is based on her experience in court, that might be different.

1997 Mr. Burling: I submit, as a basis for the questions I am about to ask, that this a question fundamentally of jurisprudence; that is, how does a German court go about determining a particular question? And if she is experienced in jurisprudence and if she has worked on jurisprudence—

The Court: You asked her to take into account the relation of father and son. I doubt if you would find that in any book. I doubt if you would find that ruled on by a

court one in a hundred times, so I am a little bit inclined to think that, as a technical expert, you are getting a little out of the domain of what we are considering. I would very much doubt if a court would do it. I cannot think of any court in the world that would take that into account.

Mr. Burling: I won't press the point. However, it seems to me Your Honor will have to do in this case what I wanted to bring out from this witness a German court can do.

The Court: I think certain types of testimony in relation to a sham will be admitted in every court in the world, unless the contrary is shown. I certainly think that must be the law, unless the contrary is shown. Now, if you have any rules of law to the contrary, that is different.

Mr. Burling: I won't take up Your Honor's time. I will proceed.

The Court: Do you agree with me on that Mr. Boland, that the ordinary matters to be considered in connection with an alleged sham transaction would be considered by every court, that any abnormal situation to attempt to show sham would go in in any court, unless there is a rule to the contrary?

Mr. Boland: I think so, to find out whether there was an agreement other than the agreement which was formalized.

The Court: And motives.

Mr. Boland: And motives.

The Court: And motives of foreign exchange, father and so on bad feeling; whether he shot at him the week before, or something like that. They are obvious in every case we have, unless you have some peculiar country that we do not know anything about.

The reason I am sustaining the objection is not that I think the testimony is mistaken, but I think it is obvious and it is not a matter for expert testimony. If you want to argue that that is not so and that there is some law to the contrary, then I think I ought to consider whether I

ought to consider it or not. I do not think Dr. Kronstein testified on that.

Mr. Boland: No.

The Court: If we are going to have any contest on that point—

Mr. Boland: We can handle it in rebuttal.

The Court: If you are going to call him on that, I 1999 think I will have to consider whether I will let her testify in surrebuttal. That is not in the case now, however.

Mr. Burling: Yes, Your Honor.

By Mr. Burling:

Q. Have you examined Plaintiff's Exhibit 5, Miss Schoch (handing a document to the witness)? A. Yes, I have.

Mr. Burling: If Your Honor please, this is the gift agreement itself.

By Mr. Burling:

Q. Have I requested you to go over it with great care? A. Yes, you have.

Q. And have you done so? A. Yes, I have.

Q. Now, can you tell, from examining the face of the instrument itself, whether or not the document is a sham or is a bona fide gift agreement? A. On the face of the document, you cannot tell either.

Q. And you would not expect, would you, to have the words "sham transaction" written at the head of a transaction which was in fact a sham? A. No; I would not expect any words in such an agreement to indicate the counterintention of the parties.

Q. Now, I ask you to assume that on October 5, 2000 1931, Wilhelm von Opel said to his son, Fritz von Opel, that Wilhelm would make a gift of the 600

Opel shares which are referred to in this document at a later date, but that there was not time enough to prepare a gift agreement because it was necessary for Fritz von Opel to leave Germany the next day for America and to negotiate with General Motors, and that when Fritz von Opel returned to Germany thereafter a gift agreement would then be drawn up and predated to the date October 5, and I ask you to assume further that Fritz von Opel did then proceed to America and, under a power of attorney, did sell the shares to General Motors and then did return to Germany, and in November, 1931, this instrument was drawn up and dated October 5, 1931.

Now, on that assumption, and examining the document, would or would not title to anything pass from Wilhelm to Fritz von Opel upon the execution of the instrument? A. May I just ask you, I am to assume that the instrument was executed in November after the Opel shares had been sold?

Q. After the Opel shares had been sold to General Motors and General Motors had paid some dollars, some shares of General Motors stock, and was obligated to make an additional payment in dollars. A. On that assumption, the gift would be a gift of foreign exchange and foreign securities. Such a gift would have required a license from the German Government. In the absence of such license, the gift would have been void.

Q. So that if we assume also that no license to make a gift of foreign exchange was obtained, then the transaction would be totally void; is that correct? A. Yes.

Q. Pursuant to what section of what executive order, if you know? A. I think it was section 12 of—I would like to look it up—of the August 1st decree—yes; section 12 of the decree of August 1st, 1931, a provision which was repeated in subsequent consolidating laws.

Q. So that if you assume that Plaintiff's Exhibit 5, which is the purported gift agreement of October 5, 1931, was not signed until November, 1931, and if you assume